

ORIGINAL DOCUMENTS IN SAFE

Case No. 294

Date of filing: 20/1/1994

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision 20 Jan 94  
\_\_\_\_\_ 9 pages in English \_\_\_\_\_ 10 pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

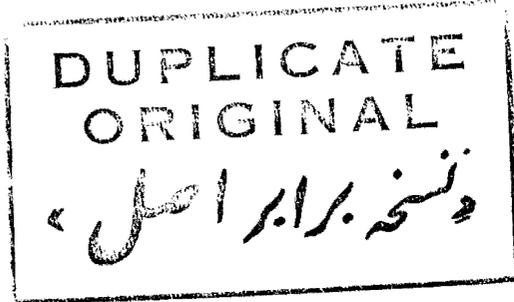
\*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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\*\* DISSENTING OPINION of \_\_\_\_\_  
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعوی ایران - ایالات متحدہ



CASE NO. 294

CHAMBER THREE

DECISION NO. DEC 120-294-3

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,  
IRAN POWER GENERATION AND TRANSMISSION CO.,  
MAHNAKH SPINNING & WEAVING CO.,  
FARNAKH SPINNING & WEAVING CO.,  
BANK SHAHRYAR,  
BANK MELLI IRAN,  
INTERNATIONAL BANK OF IRAN AND JAPAN, and  
BANK MARKAZI IRAN,

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	20 JAN 1994
	۱۳۷۲ / ۱۰ / ۳۰ تاریخ

DECISION

1. On 15 January 1982 WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Claimant") brought a claim against THE ISLAMIC REPUBLIC OF IRAN, IRAN POWER GENERATION AND TRANSMISSION CO, MAHNAKH SPINNING & WEAVING CO., FARNAKH SPINNING & WEAVING CO., BANK SHAHRYAR, BANK MELLI IRAN, INTERNATIONAL BANK OF IRAN AND JAPAN and BANK MARKAZI IRAN (the "Respondents").

2. The Statement of Claim identifies several claims which, according to the Claimant, are based on advances, loans, promissory notes, charges, reimbursement obligations and unpaid interest on syndicated loans made by the Claimant and other banks to the Respondents and excess interest paid and overpayments made by the Claimant on deposit accounts of the Respondents at branches of the Claimant located outside the United States.

3. Following a settlement between the Parties of certain portions of the Claims, the Tribunal, by Order of 24 October 1983, terminated, pursuant to Article 34, paragraph 1, of the Tribunal Rules, "the arbitral proceedings in this case, except for those items set out in paragraphs 11(a) and 12(d) of the Statement of Claim."<sup>1</sup> The remaining Claims also were settled in the later course of the proceedings. This follows from the

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<sup>1</sup> In paragraph 11(a) of the Statement of Claim, the Claimant seeks the recovery of an amount of U.S.\$2,550.30 from the International Bank of Iran and Japan. This sum allegedly represents late charges billed to the said Bank because it had failed to refund the Claimant timely for the payment the latter had made pursuant to a number of bankers acceptances for which it was entitled to reimbursement from the International Bank of Iran and Japan.

In paragraph 12(d) the Claimant seeks interest totalling U.S.\$208,823.14 for the late payment of several syndicated loans in which it participated. These loan agreements were concluded with the Agricultural Development Bank of Iran, the Industrial Credit Bank, the Industrial and Mining Development Bank of Iran and Polyacryl Iran Corporation.

letter of the Claimant's Counsel filed with the Tribunal on 1 May 1991 stating that "[its] client, Wells Fargo Bank, has confirmed ... that it no longer has claims pending in connection with [this Case]."

4. On 20 April 1992 the Tribunal advised the Parties that it "intend[ed] to terminate the proceedings in this Case in accordance with Article 34 of the Tribunal Rules unless the Respondents raise[d] justifiable objections thereto ... [by] 11 May 1992." On 11 May 1992 the Respondents filed a letter with the Tribunal stating that they "have no objection to the termination of the Case concerning the Claims asserted by the Claimant." The Respondents added that "certain parts of the Claims asserted in Cases Nos. 707 and 741 before Chamber Two have been identified as Counterclaims in the instant Case." In the same letter the Respondents requested the Tribunal to examine these "pending [C]ounterclaims."

5. It is necessary to retrace the history of the Counterclaims in question to have a clearer view on their relationship with the Case at hand.

6. In Cases Nos. 707 and 741 Bank Markazi Iran, acting on its own behalf and on that of various Iranian agencies, filed a series of claims on 18 January 1982 against Wells Fargo<sup>2</sup> based on the latter's alleged failure to reimburse certain principal sums held by it for the account of the Iranian agencies and to pay interest on deposits and assets which also were held for the account of the Iranian agencies.

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<sup>2</sup> The Statement of Claim in Case No. 707 refers to Wells Fargo Bank International as the respondent. The Statement of Claim in Case No. 741 refers to Wells Fargo Bank, National Association as the respondent.

7. On 5 September 1983 a submission signed by both Parties on 28 July 1983 was filed in Cases Nos. 707 and 741 requesting "the dismissal of portions of the cases listed on the Schedule [to the submission] that pertain to the settled claims specified under each such listed case." The Schedule indicated, inter alia, that "[t]he whole [of] case [No. 707 was terminated] except for certain Iranian claims as set out in Table A1 to Schedule A of the Statement of Claim, the claims being for the respective amounts of U.S.\$69,310.23, U.S.\$50,000.00, U.S.\$47,867.03, U.S.\$22,750.00, and U.S.\$60,816.00." In connection with Case No. 741 the Schedule mentioned that "[t]he claim for U.S.\$7,000 being a part of the total claim for U.S.\$20,000.00 as set out in Table A1 to Schedule A of the Statement of Claim was terminated."<sup>3</sup>

8. By Orders of 6 October 1983 Chamber Two terminated the proceedings in Cases Nos. 707 and 741 pursuant to Article 34, paragraph 1, of the Tribunal Rules "insofar as they concern the above specified portion of the claim."

9. On 12 March 1984 Bank Markazi Iran filed a letter in Case No. 707 whereby it informed the Tribunal "that the claim of Bank Saderat, London Branch, against Wells Fargo for U.S.\$60,816.10, referred to in Table A1 to Schedule A of the ... Statement of Claim, has now been settled" and that "[t]herefore, Bank Markazi Iran ... withdraw [sic] this claim against the Respondent."

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<sup>3</sup> Table A1 to the Statement of Claim in Case No. 707 mentions, inter alia, an amount of U.S.\$60,310.23 due to the International Bank of Iran and Japan, an amount of U.S.\$50,000.00 due to Bank Iranshahr and an amount of U.S.\$60,816.10 due to Bank Saderat London Branch. It does not specifically mention the amounts of U.S.\$47,867.03 and U.S.\$22,750.00, although it does list an amount of U.S.\$376,330.08 due to the Bank of Tehran. In Table A1 to the Statement of Claim in Case No. 741 an amount of U.S.\$20,000.00 is listed due to Bank Melli Iran.

10. By Order of 22 March 1984 Chamber Two terminated the proceedings in Case No. 707 pursuant to Article 34, paragraph 2 of the Tribunal Rules "insofar as the above specified portion is concerned."

11. Consequently, as of the date of that Order, the only Claims that remained pending are, on the one hand, those for the amounts of U.S.\$69,310.23, U.S.\$50,000.00, U.S.\$47,867.03 and U.S.\$22,750.00 in Case No. 707 and, on the other, the one for the balance of U.S.\$13,000.00 in Case No. 741.

12. Subsequent to the Tribunal's decision in Case No. A-17, United States of America and Islamic Republic of Iran, Decision No. DEC 37-A17-FT (18 June 1985), reprinted in 8 Iran-U.S. C.T.R. 189, Chamber Two on 24 July 1985 issued Orders in Cases Nos. 707 and 741 stating, inter alia, that

1. The Tribunal hereby informs the Parties that it intends to terminate all proceedings in th[ese] Case[s], pursuant to Article 34 of the Tribunal Rules, unless the Claimant[s] inform[] the Tribunal, by 2 September 1985,<sup>4</sup> that the present Claim[s] involve[] ... amounts owing and payable to [them] from Dollar Account No. 2.

2. The Tribunal reminds the Parties that if the Iranian bank claim[s] involved in the present Case[s] relate[] to ... claim[s] by a United States banking institution or other private entity in another Case, then a party in such other Case may request that the Iranian bank claim[s] be decided as ... counterclaim[s] in that other Case. Such request should be filed in the Case involving the claim brought by the United States banking institution or other private entity, not later than 1 October 1985.

13. On 1 October 1985 Bank Markazi Iran filed a letter in Cases Nos. 707 and 741 in which it stated that "none of the

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<sup>4</sup> By Order of 16 September 1985 Chamber Two extended this deadline until 1 October 1985.

[Claims in the said Cases] ... , is payable from Dollar Account No. 2." At the same time, it requested the adjudication of these Claims "as [C]ounterclaims to those by the American Claimants [in Case No. 294], in accordance with paragraph 2 of the Order dated July 24, 1985."

14. By Orders of 26 November 1985 filed in Cases Nos. 707 and 741 Chamber Two reminded the Parties that the Tribunal, in its Decision in Case No. A-17, has held, inter alia

Claims by Iranian banks against United States banking institutions are within the jurisdiction of the Tribunal only to the extent, if any, that they are disputes as to amounts owing from Dollar Account No. 2 for the types of debts payable out of that account which have been referred to the Tribunal in accordance with Paragraph 2(B) of the undertakings.

15. Having noted Bank Markazi Iran's statement of 1 October 1985 that the Claims in Cases Nos. 707 and 741 do not involve an amount or amounts owing and payable to it from Dollar Account No. 2, Chamber Two decided in the said Orders that the Tribunal "lack[ed] jurisdiction over [those] Claim[s]." In view thereof, Chamber Two terminated the arbitral proceedings in both Cases pursuant to Article 34 of the Tribunal Rules.

16. With regard to Bank Markazi Iran's request that the Claims in Cases Nos. 707 and 741 be adjudicated as Counterclaims in Case No. 294, Chamber Two remarked in the same Orders that its Orders of 24 July 1985 required such "Counterclaim ... [to] be filed by a Party to the Case in which the Counterclaim is sought to be filed, and in that Case." (Emphasis added) Chamber Two therefore concluded that the request filed on 1 October 1985 in Cases Nos. 707 and 741 was "made in the wrong case."

17. In considering Bank Markazi Iran's request described in paragraph 4, supra, to examine the Claims it had filed in

Cases Nos. 707 and 741 that were not terminated by Chamber Two's Orders of 6 October 1983 and 24 March 1984 as Counterclaims in the present Case, the initial question is whether those Claims are admissible as Counterclaims in this Case. The Tribunal notes in this respect that Chamber Two's Orders of 24 July 1985 required that the request to decide the Iranian bank claims as Counterclaims in the other Cases be filed in such other Cases not later than 1 October 1985. However, Bank Markazi Iran's requests to decide the remaining Claims in Cases Nos. 707 and 741 as Counterclaims in Case No. 294 were filed before Chamber Three in Case No. 294 several months after the October deadline set by that Order, namely on 14 January 1986.<sup>5</sup>

18. Having noted this problem, the Tribunal observes that in order to take up the Counterclaims in the context of this Case it would, in any event, need to be established that such Counterclaims are within its jurisdiction. Although in their letter of 11 May 1992 the Respondents have requested the Tribunal "to initially determine the issues on [sic] jurisdiction," they have not put forward any arguments in support of the Tribunal's jurisdiction over the Counterclaims in question.

19. Considering that the Counterclaims do not involve an amount or amounts owing and payable from Dollar Account No. 2, if jurisdiction exists, it must be found under the Claims Settlement Declaration. According to Article II, paragraph 1, of the Claims Settlement Declaration, to be within the Tribunal's jurisdiction, a counterclaim must arise "out of the same contract, transaction or occurrence that constitutes the subject matter of ... [the] claim." As explained in paragraph 3, supra, when Bank Markazi Iran filed its Counterclaims in

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<sup>5</sup> On 14 July 1986 the Claimant objected to these requests.

this Case on 14 January 1986, only those Claims set out in paragraphs 11(a) and 12(d) of the Statement of Claim in Case No. 294 were still pending. It must therefore be established that Bank Markazi Iran's Counterclaims arise "out of the same contract, transaction or occurrence that constitutes the subject matter" of the Claims set out in those paragraphs.

20. The Tribunal notes that the Claims set out in paragraph 11(a) and 12(d) of the Statement of Claim purportedly arise from loans and other banking transactions between the Claimant and the Respondents, whereas Bank Markazi Iran's Counterclaims arise out of Wells Fargo's alleged failure to transfer funds which it held in different accounts for various Iranian agencies. Bank Markazi Iran has not identified, nor has the Tribunal been able to find in the record, any specific link between the transactions forming the basis of the Claims and the account arrangements on which the Counterclaims are based.<sup>6</sup>

21. Consequently, the Tribunal holds that the Counterclaims do not arise out of the "same contract, transaction or occurrence" as the Claims and that, therefore, it has no jurisdiction over the Counterclaims under Article II, paragraph 1, of the Claims Settlement Declaration.

22. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

a) The Counterclaims are dismissed for lack of jurisdiction.

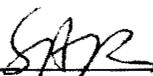
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<sup>6</sup> Furthermore, as noted in footnote 2, supra, the Claims in Case No. 707 were brought against Wells Fargo Bank International, which is not a party to Case No. 294.

b) The remaining arbitral proceedings in Case No. 294 are terminated in accordance with Article 34, paragraph 2, of the Tribunal Rules.

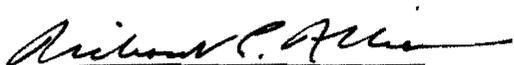
Dated, The Hague

20 January 1994



\_\_\_\_\_  
Gaetano Arangio-Ruiz  
Chairman  
Chamber Three

In the Name of God



\_\_\_\_\_  
Richard C. Allison



\_\_\_\_\_  
Mohsen Aghahosseini  
Dissenting